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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RUBEN COLMENERO DURAN, No. CIV.S-04-2719 GEB DAD PS

12 Plaintiff,

13 v. ORDER

14 INS,

15 Defendant.

16 _____ /

17 This matter came before the court on May 13, 2005, at 11:00
18 a.m. for a Status (Pretrial Scheduling) Conference. There was no
19 appearance on behalf of plaintiff. Assistant United States Attorney
20 Audrey Hemesath appeared specially on behalf of defendant.

21 As discussed on the record and in open court during the
22 status conference, plaintiff initiated this action on December 27,
23 2004, by filing a document styled as a "Petition for De Novo
24 Immigration Review." Liberally construed, that document indicates
25 that plaintiff is seeking judicial review of a denial of an
26 application for cancellation of removal by the Immigration Court in

1 San Francisco. However, 8 U.S.C. § 1252(b)(2) provides that such a
2 petition "shall be filed with the court of appeals for the judicial
3 circuit in which the immigration judge completed the proceedings."
4 See Maravilla Maravilla v. Ashcroft, 381 F.3d 855, 856 (9th Cir.
5 2004) (confirming the court of appeals jurisdiction to review a
6 decision of the Board of Immigration Appeals denying a motion to
7 reopen applications for cancellation of removal which was based on
8 ineffective assistance of counsel claim); Tinoco v. Ridge, 359 F.
9 Supp. 2d 1042, 1047 (S.D. Cal. 2005) ("Today, when an alien challenges
10 an order of removal, review generally begins in the federal courts of
11 appeal, through [Immigration and Nationality Act] § 242's direct
12 review.").

Accordingly, IT IS HEREBY ORDERED that:

14 1. Plaintiff shall show cause in writing within twenty
15 (20) days of the date this order is filed why this case should not be
16 dismissed for lack of subject matter jurisdiction. See Fed. R. Civ.
17 P. 12(h) (3) ("Whenever it appears by suggestion of the parties or
18 otherwise that the court lacks jurisdiction of the subject matter,
19 the court shall dismiss the action."). Failure to timely file the
20 required writing will result in a recommendation of dismissal.

21 2. The Clerk of the Court is directed to deliver a copy of
22 this order to the attention of Audrey Hemesath at the Office of the

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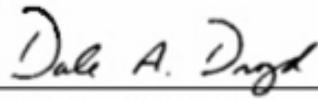
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1 United States Attorney for the Eastern District of California.

2 DATED: May 20, 2005.

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5 DALE A. DROYD

6 UNITED STATES MAGISTRATE JUDGE

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